

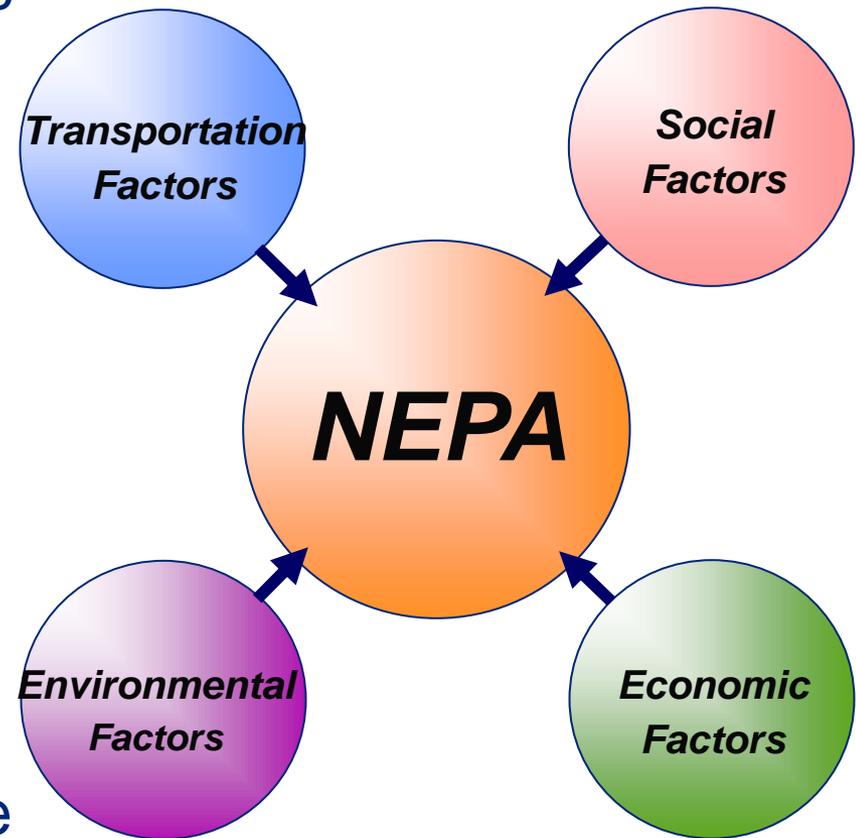
Opportunities for Accelerating FTA Project Development Post MAP-21

October 20, 2013

*Diana C. Mendes, AICP
AECOM*

Overview

- Framework for FTA approach to environmental review during project development
- Provisions in MAP-21 to accelerate project development of FTA projects
- Opportunities to streamline FTA environmental review
- Implications for project development in the future- one practitioner's view



National Environmental Policy Act (NEPA)

- Consider consequences of federal actions on the human and natural environment, including trade-offs
- Evaluate alternative courses of action that could achieve purpose and need
- Discuss situation with interested and affected parties
- Document decisions and outcomes



Does
Current
Situation
Work?

What are
Problems
Or Needs?

What
Can We
Do?

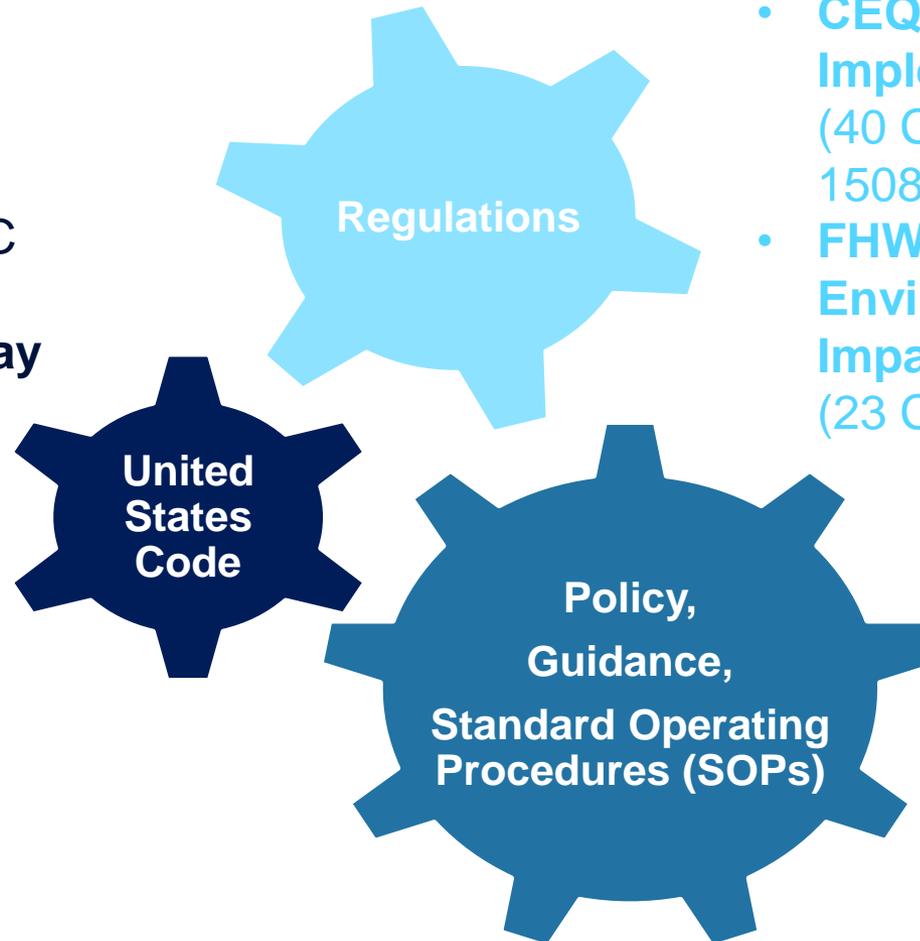
What
Would
Happen
If We Did?

What
Do We
Want To
Do?

How
Can We
Get It
Done?

Key Drivers of FTA Environmental Review

- **Federal Transit Law** (49 USC Chapter 53)
- **Federal Highway Law** (23 USC Section 139)



- **CEQ's Regulations for Implementing NEPA** (40 CFR Parts 1500-1508)
- **FHWA/FTA Environmental Impact Procedures** (23 CFR part 771)

- **SAFETEA-LU Env. Review Process Guidance** (2006)
- **FEIS/ROD Interim Guidance** (2013)

Roles in FTA Environmental Review

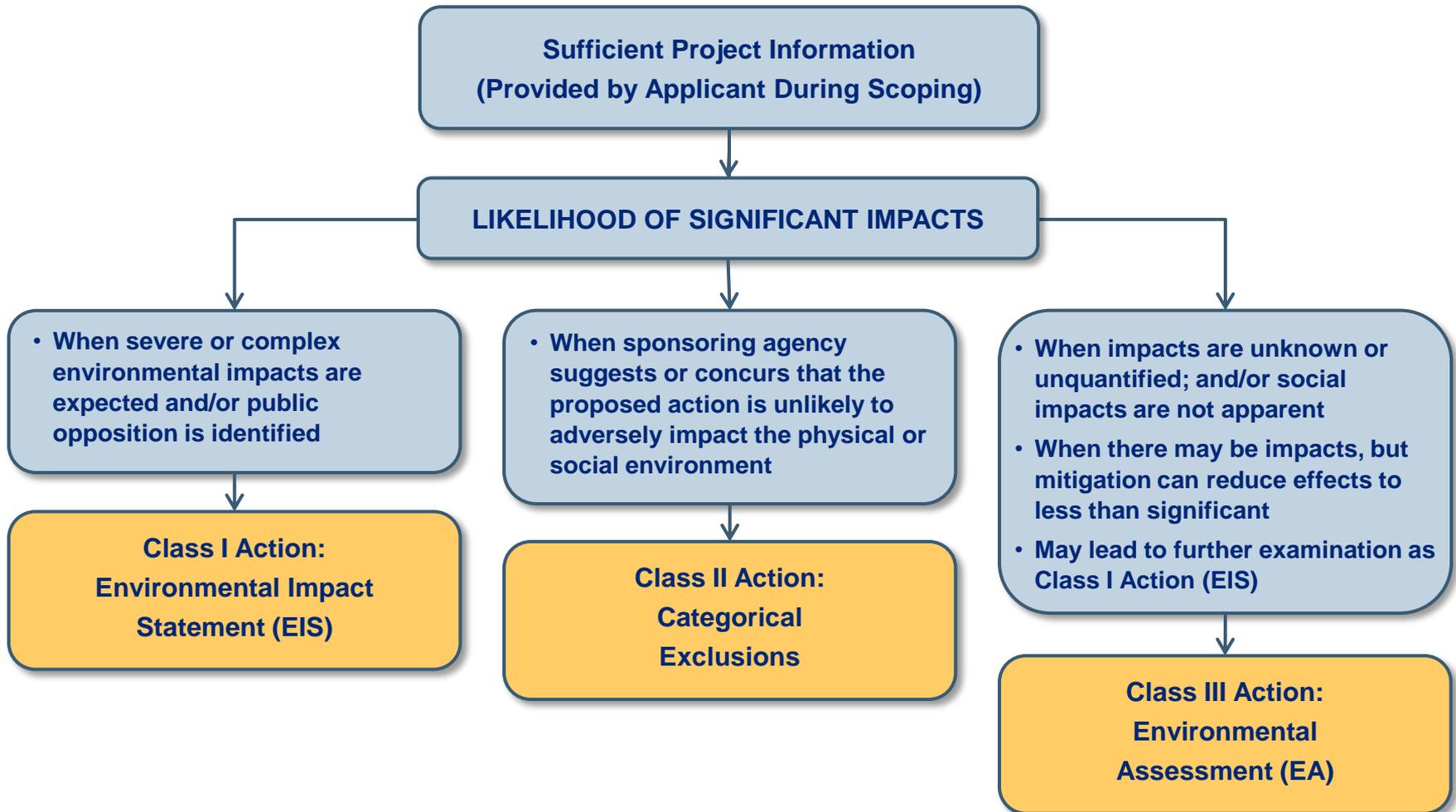
FTA Role

- Serves as NEPA Lead agency or a cooperating agency for projects seeking FTA funding
- Actively manages development of environmental documents
- FTA approval required for all FTA NEPA documents/environmental determinations

Transit Agency Role

- Joint lead agency under NEPA
- Prepares NEPA document with direction from FTA
- Implements projects

Class of Action Drives FTA Environmental Review Approach



Streamlined Documents Expedites Decision-making

- Provide clear project definition, purpose, and need
- Highlight key issues and be concise
- Know your audience and engage readers (Tell the story)
- Use plain language, avoid jargon and acronyms
- Use graphics and tables



Keys to Streamlined Documents: Proportional Analysis

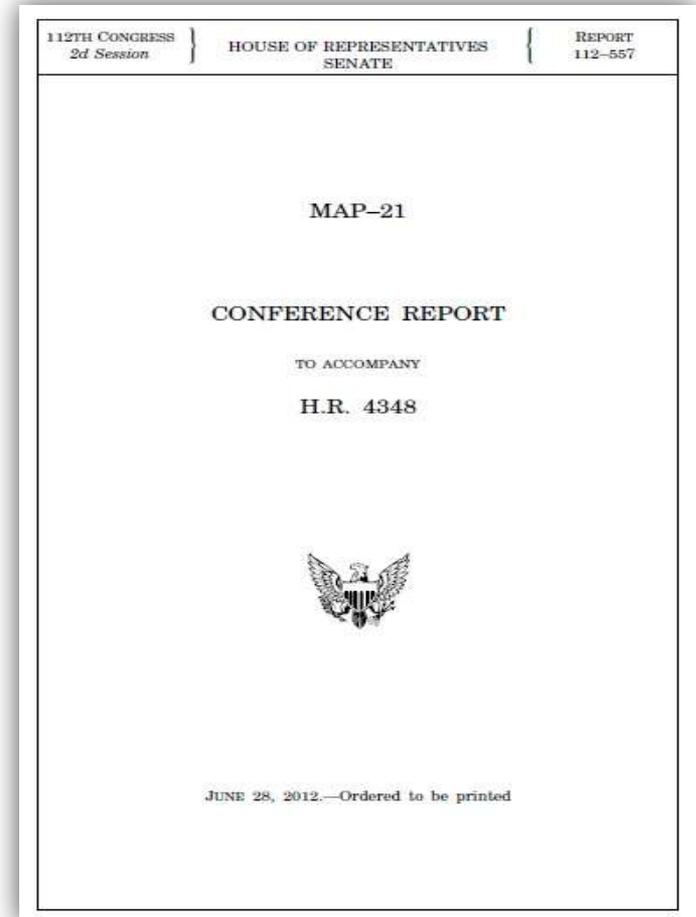
Environmental Documents should:

- Contain information important to the decision
- NOT address every conceivable area of impact
- Note impacts that are not significant or of concern
- List issues/resources investigated and not affected by project
- Reference technical analysis in the appendix



Key Tools in MAP-21 to Accelerate Project Development

- Lead agency roles in schedules
- Agency coordination and schedules
- Incorporating prior planning work into NEPA review
- Categorical Exclusions
- Combined FEIS/ROD
- Coordination with funding programs



Lead Agency Role in Schedules Reinforced in MAP-21

Section 1305

- Amended 139(g)(1)(B)(i) of 23 USC139

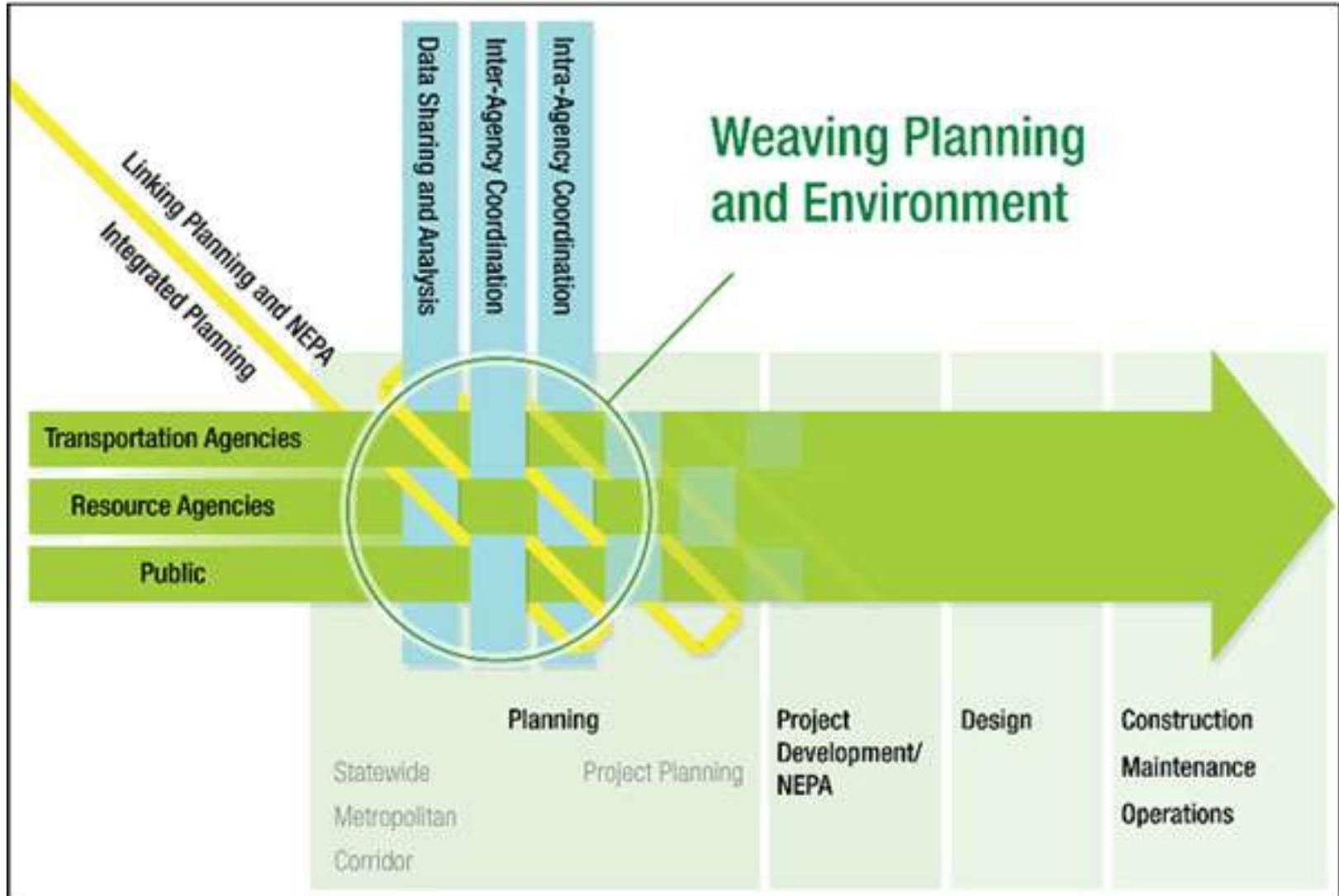
“(i) IN GENERAL- The lead agency may establish as part of the coordination plan, after consultation with and the concurrence of each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.”

Section 1306 (Accelerated Decision-making)

- Financial Provisions Affecting Federal Agencies
 - Applies to instances where a decision on a permit, license, or other approval is not made within the deadlines established in the project financial plans (23 U.S.C. § 139(h)(6))
 - Reviewing Agency has 180 days to render a decision from the later of FHWA/FTA's issuance of a FONSI or a ROD, or the date on which a complete application is submitted
 - Penalties to Federal agencies for not making decisions in prescribed timelines
- Issue Resolution and Referral (new Sec 139(h)(5))
 - Expands upon the issue resolution process established in SAFETEA-LU
- Work in progress



Linking Planning and NEPA



Section 1319 (Accelerated Decision-making in Reviews)

- Minor comments (factual corrections or explanations of why no further response is needed) on DEIS can be addressed in errata form for FEIS
- To maximum extent practicable, publish a combined FEIS and ROD document, unless
 - There are substantial changes to the proposed action relevant to environmental or safety concerns; or
 - There are significant new circumstances or information relevant to environmental concerns
- FEIS/ROD interim guidance complete (01/14/13)

MAP-21 Flexibility for FEIS/ROD

Categorical Exclusion

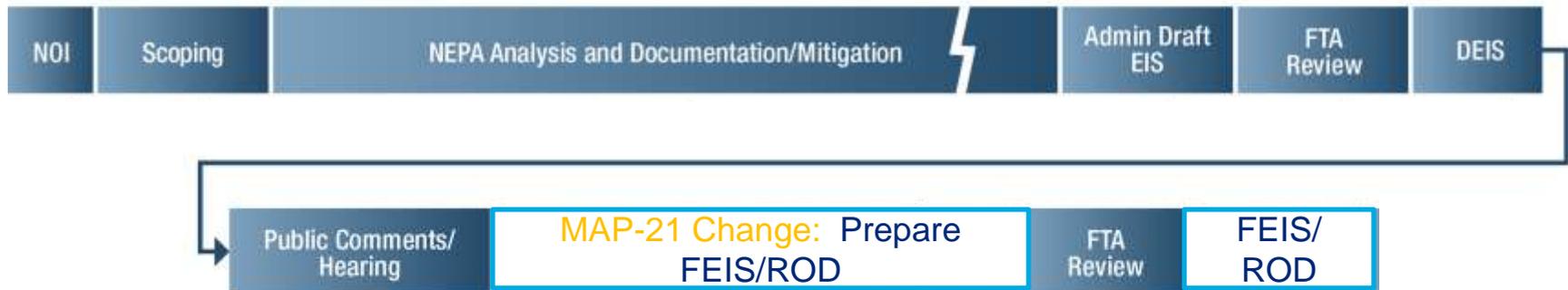


Proportional timeframes only –
Not by law or regulation

Environmental Assessment



Environmental Impact Statement



Categorical Exclusions (CEs): A Powerful Streamlining Tool

MAP-21

- Multi-modal CE Process (Sec. 1314)
- Emergency CE (Sec. 1315)
- Operational Right-of-Way CE (Sec. 1316)
- Limited Federal Assistance CE (Sec. 1317)
- Additional New CEs (Sec. 1318)

FTA CEs at Section 771.118

- Ten CEs at Sec. 771.118(c)
- Broad Authority with Six Examples under Sec. 71.118(d)

 **8964** Federal Register / Vol. 78, No. 26 / Thursday, February 7, 2013 / Rules and Regulations

request under the Privacy Act pursuant to this part.

§ 1212.704 [Corrected]

■ 3. In paragraph (a) remove the word "Installations" and add in its place the word "Centers" and remove the words "Component Centers" and add in its place the words "Component Facilities."

Naselle Jennings,
NASA Federal Register Liaison Officer
(PR Doc. 2013-02779 Filed 2-6-13; 8:45 am)
BILLING CODE 7030-13-P

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration

23 CFR Part 771
Federal Transit Administration

49 CFR Part 622
[Docket No. FTA-2011-0056]
RIN 2132-AB03

Environmental Impact and Related Procedures

AGENCY: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes revisions to the joint Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regulations that implement the National Environmental Policy Act (NEPA). The revisions are aimed at streamlining the FTA environmental process for transit projects, in response to the August 31, 2011, Presidential Memorandum titled "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review." The revisions also respond to Executive Order 13563's directive to periodically review existing regulations to determine if they can be made more effective and/or less burdensome. The new categorical exclusions (CEs) established by this rule, which affect actions by FTA and FTA grant applicants, are intended to improve the efficiency of the environmental review process by making available the least intensive form of review for those actions that typically do not have the potential for significant environmental effects, and, therefore, do not merit additional analysis and documentation associated with an environmental assessment or an environmental impact statement.

DATES: Effective on February 7, 2013.

FOR FURTHER INFORMATION CONTACT: Megan Illam at (202) 366-6463, Terence Plaskon at (202) 366-0443, Office of Planning and Environment (TPE); or Christopher Van Wyk at (202) 366-1723, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) published a Notice of Proposed Rulemaking (NPRM) on March 15, 2012. In the NPRM, FTA proposed: (1) The creation of ten new categorical exclusions (CEs) to be located in a newly proposed section of the regulation at 23 CFR 771.118; (2) the expansion of public involvement methods to include electronic means; (3) the addition of language on early scoping into the regulations; (4) a modification to the list of project types that normally result in the preparation of an Environmental Impact Statement (EIS); and (5) the inclusion of an FTA review role in contracting for Environmental Assessment (EA) and EIS projects. The comment period closed on May 14, 2012.

Numerous organizations submitted substantive comments to FTA that generally were positive in tone. Many comments requested clarification of terms or phrases, and several comments requested modification of the CE language and/or adding additional examples to the CEs found under section 771.118(c). Other than comments on preamble terminology itself, these comments were addressed by either providing the requested clarifications or modifying the CE language or examples.

Some of the more substantial revisions made in response to comments received on the proposed rule include: (1) The removal of an "adverse effect to historic properties" condition from section 771.118(c)(3); (2) the addition of "operating assistance" to section 771.118(c)(4); (3) a distinction between bridge projects i.e., section 771.118(d)(2) covers projects involving new construction or reconstruction of a bridge, while section 771.118(c)(8) covers bridge rehabilitation and maintenance; and (4) the deletion of the proposed requirement that FTA review the project scope prior to contract finalization for preparation of EAs and EISs. FTA also made a number of minor revisions to the proposals in the NPRM,

which are described in detail in this final rule.

Additionally, since the close of the comment period for the NPRM, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21). This final rule is consistent with provisions in MAP-21, and FTA and FHWA will initiate further rulemaking to implement the various environmental provisions contained in MAP-21. FTA made one edit in particular with respect to MAP-21: FTA removed the "railroad" limitation from the early acquisition of right-of-way CE pursuant to MAP-21's revision to 49 U.S.C. 5323. Previously, an FTA grant applicant was permitted to acquire only railroad right-of-way prior to the completion of NEPA, but with the statutory revision, FTA grant applicants are now permitted to acquire any right-of-way, at their own risk, prior to the completion of NEPA. FTA received comments on its proposed CE for early acquisition in the NPRM, and the changes made by the final rule to the early acquisition provision in the regulation and to the CEs for early acquisition mirror the MAP-21 statutory language.

Of the five major changes FTA and the FHWA included in the March 2012 NPRM noted in the beginning of the Executive Summary, four are being carried forward in this final rule: (1) The creation of ten new CEs to be located in a newly proposed section of the regulation at 23 CFR 771.118; (2) the expansion of public involvement methods to include electronic means; (3) the addition of language on early scoping into the regulations; and (4) a modification to the list of project types that normally result in the preparation of an EIS. FTA intends that the preamble language contained in this final rule be used as guidance when applying the changes made by this final rule. This rule will become effective immediately upon publication, as described in the "Immediate Effective Date" section below.

Background

This final rule makes a number of revisions to the procedures that govern how FTA complies with the National Environmental Policy Act (NEPA). The regulation being revised, Part 771 of Title 23, Code of Federal Regulations (CFR), is a joint FTA and FHWA regulation, but nearly all of the revisions are written specifically to apply to actions by FTA and FTA grantees. The rule does contain a minor, non-substantive revision to a footnote discussing supplementary guidance, which applies specifically to the FHWA.

Good Planning = CE = Streamlined Environmental Review

- Rewards choosing better project locations:
 - within or adjacent to existing transportation right-of-way
 - in areas consistent with existing land use and zoning requirements (including floodplain regulations)
- Using existing facilities to the extent possible
- Taking advantage of public involvement and agency coordination during the planning process
- Avoiding environmentally sensitive areas/resources

CEs listed in Section 771.118(c)

“

- (1) Utility and similar appurtenance action
- (2) Pedestrian or bicycle action
- (3) Environmental mitigation or stewardship activity
- (4) Planning and administrative activity
- (5) Action promoting safety, security, accessibility
- (6) Acquisition, transfer of real property interest
- (7) Acquisition, maintenance of vehicles / equipment
- (8) Maintenance, rehab, reconstruction of facilities
- (9) Assembly or construction of facilities
- (10) Joint development of facilities
- (11) Emergency recovery actions

CE Examples and Broad Authority in Section 771.118(d)

“Examples

- (1) Highway modernization
- (2) Bridge replacement or rail grade separation
- (3) Hardship or protective property acquisition
- (4) Acquisition of right-of-way
- (5) Bicycle facility construction
- (6) Facility modernization

Open-ended broad authority

- Enables CE for those actions that have no significant environmental impacts and can be processed as CEs but don't neatly fall under any of the CEs or examples listed

A Word on Pre-Award Authority and CEs

- Framework for FTA Approach to environmental review during project development
- Applicants may incur costs for projects that clearly meet the criteria for CEs
- However, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance
- Contact your FTA Regional Office early for assistance

Other MAP-21 Provisions that Assist Expedited Delivery

Section 1307 (Federal/State Agency Assistance)

- MOU requirement for dedicated staffing funds
 - No change to overall process
 - Added agreement vehicle (MOU) provision for establishing projects/priorities to be addressed with use of the funds

Section 1308 (Limitations on Claims)

- 150 days (no longer 180 days)



Other MAP-21 Provisions that Assist Expedited Delivery

Section 20016 (Corridor Preservation)

- Prior to MAP-21: Limited to pre-existing railroad ROW for a future transit project (former 49 U.S.C. § 5324(c))
- MAP-21: Removed “railroad” limitation and moved provision to 49 U.S.C. § 5323(q):
 - FTA may assist in the right-of-way acquisition before NEPA is initiated under certain conditions
 - Right-of-way may not be developed until NEPA is complete



Other MAP-21 Provisions that Assist Expedited Delivery

Section 1309 (Enhanced Technical Assistance)

- Provision applies only:
 - When technical assistance requested for outstanding issues and project delay **AND**
 - To projects with ongoing EISs for which a ROD has not been issued within at least two years of NOI
- FHWA/FTA must establish and meet a schedule for completing the specific outstanding issues/project delay
- Result: Completion of any permit, approval, review, or study subject to the technical assistance scope within four years of Notice of Intent (NOI)

Section 20008 (Fixed Guideway Capital Investment Grants)- Alternatives Analysis

- Eliminates the stand-alone Alternatives Analysis (AA) requirement from 49 U.S.C. § 5309
- For environmental review purposes, former or ongoing AAs:
 - considered a “planning study” that can be used to inform the NEPA process
 - reference in the NEPA document (Linking Planning and NEPA)
- FAQs on www.fta.dot.gov/12304_15522.html



A View on Project Development Post MAP-21

Taken together, MAP-21 provisions:

- Provide much needed flexibility in key areas of project development
- Drive towards increased transparency, accountability and efficiency in transportation decision-making at all levels
- Clarify definition of what is federal interest versus what is local decision-making
- Reinforce that good planning matters - solid local foundation and commitment essential
- Unlock opportunities to accelerate environmental reviews